Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-651

In The Supreme Court of the United States

October Term, 1986

United Paperworkers International Union, AFL-CIO and Ouachita Local 654,
Petitioners,

v.

Misco, Inc.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

Date	Nr.	Proceeding
11/21/83	1	COMPLAINT (ljs) #
11/22/83	2-3	SUMMONS, issued & returned to atty for service (ljs)
12-21-83	4	ANSWER (Ds) to P's Complaint. (om) A RT
1-9-84	5	ACK of Receipt of Service by Mail: United Paperworkers International Union, Ouachita Local 654 served 12-9-83. (om)
2-27-84	6	ORDER - reassigning case to Judge Stagg from Judge Scott. (RHS/bc) NOE 2-28-84.
3-12-84	7-9	MOTION (Ds) to Dismiss and for SJ. Notice mailed 3-14-83 for 5-7-84 Calendar. (om) NOE
3-14-84	11	ANSWER (P) to CC. (om)
3-15-84	11	LETTER from Robert H. Urann to Clerk with attached copy of recent Fifth Circuit decision, requesting that it be brought to the Court's attention in connection with the Union's Motion for SJ. (om)
3-23-84	12-13	MOTION (P) for Extension of Time to File Opposition to D's Motions for Dismissal and SJ and to File P's Cross-Motions for SJ, referred. (om)
3-28-84	13*	ORDER allowing Pltf. until 4-18-84 to file opposition to D's Motions to Dismiss & SJ. (TS/sjd) NOE.
4-18-84	14-16	CROSS-MOTION (P) for SJ. Notice mailed 4-19-84 for 6-4-84 Calendar. (om) NOE
4-23-84	17	ME, Both motions for SJ are set for determination on 6-4-84. (TS) (om) NOE 4-23-84.
4-30-84	18-	EX-PARTE Motion (Ds) for Extension of Time to Plead, referred. (om)

Date	Nr.	Proceeding
5-2-84	19	ORDER granting Ds 10 days or until 5-8-84 within which to file Opposition to P's Cross Motion for SJ. (TS) (om) NOE 5-2-84
5-4-84	20	MEMORANDUM (Ds) in Opposition to P's Cross-Motion for SJ. (om)
8-15-84	21	LETTER (Robert H. Urann) to Judge Stagg, advising that the union again asserts that the arbitrator's award should be enforced and that the Postal Worker's case is not controlling under the facts. (bc)
10-3-84	22	MEMORANDUM Ruling; P's Motion for SJ; GRANTED. D's Motion for SJ; DENIED. Award of the arbitrator set aside. (TS/sjd) NOE 10-4-84.
10-3-84	23	JUDGMENT in accordance with Memorandum Ruling. Motion for SJ on behalf of Deft.; DENIED. Motion for SJ on behalf of Pltf.; GRANTED & the award of the arbitrator is SET ASIDE. (TS/sjd) DKT'D. 10-4-84.
		CLOSED
10-26-84	24	NOTICE OF APPEAL (D) of 10/24/84 jmt NOE: Ct.A, Urann w/app info ltr., Brooks, Gear Judge Stagg, B. Terry (pp)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. CV 83-2904 -

MISCO, INC.

versus

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and ITS QUACHITA LOCAL 645

[Filed Nov. 21, 1983]

PETITION

JURISDICTION

1.

The jurisdiction of this Court is invoked under Section 301(a) of the Labor-Management Relations Act, U. S. C. § 185(a), and the Arbitration Act, 9 U.S.C. § 4.

2.

This is a suit for violation of contract as set forth in § 301(a) and is within the jurisdiction of this Court regardless of the amount in controversy or the citizenship of the parties.

CAUSE OF ACTION

3.

This action seeks an order vacating and setting aside the October 31, 1983 arbitration award of arbitrator

Milden J. Fox, Jr. A copy of the award is attached hereto as Exhibit #1.

4.

The arbitration award referred to in paragraph 3 above should be set aside because the arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made, as required by 9 U.S.C. § 10 of the Arbitration Act for the following reasons:

REASONS ARBITRATION AWARD SHOULD NOT BE ENFORCED

(a) The arbitrator ignored the illegal possession of marijuana on the premises of Misco, Inc. by the discharged employee, a fact which was discovered subsequent to the discharge, and issued an award which compelled reinstatement of the employee as an operator of hazardous machinery, contrary to the public welfare and public policy and over the objections of the employer.

(b) The arbitrator failed to set forth findings of fact and reasons to support his decision to reinstate the discharged employee with back pay despite the employer's objections that reinstatement and back pay were inappropriate in view of the criminal conduct discovered subsequent to the employee's discharge.

(c) the arbitrator's award does not draw its essence from the contract and is without rational support in that he found it was not reasonable to discharge an employee for violation of the company rules prohibiting possession or use of narcotics on company premises, where the employer clearly has discretion under the collective bargaining agreement to promulgate the work rules.

(d) The arbitrator failed to consider that the marijuana found in the discharged employee's car is evidence that corroborated the fact that the employee possessed or was using marijuana on January 21, 1983, the night

he was arrested by the police on the employer's parking lot.

(e) The arbitrator discredited the denials of the discharged employee that he was in the back seat of a vehicle on the company's parking lot in which a lit marijuana cigarette was found, but the arbitrator did not discredit the employee's denial that he had smoked or possessed the marijuana cigarette found in the ashtray of the vehicle.

(f) Although the arbitrator credited the police who testified the employee was in the car where the lit marijuana cigarette was found and from which vehicle emanated the aroma of marijuana, and discredited the employee's denials that he had been in the vehicle at all, he found that the evidence was not "substantial" to establish just cause for the discharge.

(g) The arbitrator relied upon evidence not in the record with respect to the testimony of police in other arbitration cases concerning the burning patterns of marijuana cigarettes and concluded in view of the alleged evidence from outside the record that it would have been difficult for the police not to have seen someone light a marijuana cigarette in the vehicle.

(h) Such reliance on the non-record evidence with respect to the burning pattern of a lit marijuana cigarette is particularly prejudicial and irrational in view of the fact that the officers testified they smelled marijuana smoke from the vehicle and found a lit marijuana cigarette in the vehicle.

(i) The arbitrator relied upon a decision of the Louisiana Office of Employment Security granting unemployment compensation in circumstances in which the decision showed no direct testimony from the police was entered into the record and in which the issues were not the same.

(j) The arbitrator speculatively and prejudicially relies upon the failure of night foreman Jerry Ewing to testify as demonstrating an inadequate investigation when the evidence clearly indicated that Ewing advised his superiors that he was elsewhere in the plant at the time of the arrest and did not know about it.

(k) While the Union did not challenge the uncontroverted testimony that the rule prohibiting possession or use of narcotics and alcoholic beverages had always been enforced, the arbitrator found that because the company did not pursue a violation of company policy involving of a whiskey bottle found in the vehicle where the marijuana was found, the rule was discriminatorily enforced, an irrational conclusion in the circumstances of this case which ignores testimony of production manager Covington with respect to handling the investigation of the whiskey bottle and which further prejudicially ignores and is in contradiction of contract Article IV which provides in part that the company's failure to exercise any function or right in any particular way shall not be deemed a waiver of its rights to exercise such function or right.

(l) The arbitrator irrationally determined that the penalty of dismissal in this case was not reasonably related to the nature of the offense and the employee's past record at the time when the employee involved was on probation and the offense involved a violation of the criminal statutes of the State of Louisiana and presented a safety hazard.

(m) The entire arbitration decision and award exceeded the authority of the arbitrator, is irrational, is not supported by substantial evidence, and is against the public welfare and public policy.

5.

The arbitration award should be vacated and set aside for the reasons set forth above and for those reasons found in the entire record of these proceeding.

RELIEF

6.

It is respectfully requested that the arbitration award be vacated and set aside.

7.

It is further requested that all other relief which may be just and proper be granted the petitioner, including the award of costs and attorney's fees.

Respectfully submitted,

HUDSON, POTTS & BERNSTEIN
Post Office Drawer 3008
Monroe, Louisiana 71210

By: /s/ A. Richard Gear 11/18/83
A. RICHARD GEAR
Counsel for Misco, Inc.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. CV 83-2904

MISCO, INC.,
Plaintiff

vs.

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and ITS OUACHITA LOCAL 654,
Defendants

[Filed Nov. 21, 1983]

ANSWER

Defendants United Paperworkers International Union and its Ouachita Local 654 (hereinafter collectively referred to as the "Union") hereby answer in this cause as follows:

1.

The Union admits that jurisdiction in this cause is proper under § 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), as set out in Paragraph 1 of the Complaint, but denies that jurisdiction may properly be invoked under the provisions of the Arbitration Act, 9 U.S.C. § 4.

2.

The Union admits subject matter jurisdiction herein under § 301(a) of the Labor-Management Relations Act, but denies all other allegations of Paragraph 2 of the Complaint.

3.

The Union admits that the Complaint seeks an order vacating the October 31, 1983 Arbitration Award of Arbitrator Milden J. Fox, Jr., as set out in Paragraph 3 of the Complaint. The Union further admits that a copy of said Award is attached to the Complaint, but denies that said copy is marked as "Exhibit #1."

4, 5, 6, 7.

The Union denies the allegations of Paragraphs 4, 5, 6, and 7 of the Complaint, and specifically denies that Plaintiff is entitled to any relief in this cause.

AFFIRMATIVE DEFENSES

8.

Plaintiff's Complaint fails to state a claim against the Union upon which relief can be granted.

9.

The Union submits that Arbitrator Fox has taken his decision from the essence of the Collective Bargaining Agreement between the parties, and that Arbitrator Fox in no way exceeded the authority granted to him under said Collective Bargaining Agreement.

10.

The Union denies each and every material allegation in the Complaint except such as are admitted in the Answer.

11.

Plaintiff's action is frivolous, vexatious, and in bad faith, and the Union is entitled to recover its attorneys fees and costs in this matter against Plaintiff.

COUNTERCLAIM

12.

The jurisdiction of this Court is invoked pursuant to the provisions of § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185.

13.

The Union is a labor organization representing employees in industries affecting commerce within the meaning of 29 U.S.C. § 152, and is engaged in the representation of employees in Monroe, Louisiana.

14.

Plaintiff is an employee in an industry affecting commerce within the meaning of 29 U.S.C. § 152. Plaintiff operates a paper converting facility at Monroe, Louisiana, and is authorized to and does engage in business within the jurisdiction of this Court.

15.

At all times material herein, Plaintiff and Defendant Union have been parties to a Collective Bargaining Agreement (hereinafter the "Agreement") which, by its terms, is in effect from March 30, 1981 through March 30, 1984. A copy of the Agreement is attached hereto as "Exhibit A."

16.

The Agreement referred to in Paragraph 15 contains, in Articles V and VI, a grievance and arbitration procedure for the resolution of all disputes arising out of the interpretation or application of the terms of the Agreement. The Agreement provides that if the parties are unable to resolve any disputes through the grievance procedure, the matter in dispute may be referred to final and binding arbitration.

17.

On or about February 7, 1983, a dispute arose between the parties concerning Plaintiff's discharge of employee Isiah Cooper (hereinafter the "Grievant"). On that date, Defendant Union timely submitted a grievance protesting Grievant's discharge and requesting that he be reinstated and made whole for all losses. This grievance was duly processed through all the steps of the grievance procedure, but the parties were unable to resolve said grievance. The grievance is attached hereto as "Exhibit B."

18.

Defendant Union thereafter submitted this grievance to binding arbitration, and the parties selected Arbitrator Milden J. Fox, Jr. to serve as Arbitrator in this matter. A hearing before Arbitrator Fox was held on September 26, 1983. On October 31, 1983, Arbitrator Fox issued an Award upholding the grievance, thereby ordering Plaintiff to reinstate the Grievant and to make him whole for all loss of earnings, seniority, and other benefits. A copy of the Award is attached to the Complaint.

19.

The Award of Arbitrator Fox draws its essence from the Collective Bargaining Agreement between the parties, and Arbitrator Fox in no way exceeded the authority granted to him under said Agreement. No grounds exist for setting aside the Award. Plaintiff nevertheless has refused to abide by said Award.

20.

Plaintiff's refusal to abide by the Award of Arbitrator Fox is unreasonable, in bad faith, and without justification, and the Union is entitled to recover its attorneys fees and costs in this matter against Plaintiff.

WHEREFORE, Defendant Union prays that this Court enter a judgment enforcing the Arbitration Award in its entirety against Plaintiff, and rendering Defendant Union its attorneys fees, costs, and all other relief to which Defendant Union may be held entitled.

Respectfully submitted,

/s/ Mark M. Brooks
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(Certificate of Service Omitted in Printing)

EXCERPTS FROM THE COLLECTIVE BARGAINING AGREEMENT ATTACHED TO THE ANSWER AS EXHIBIT A

ARTICLE IV.

MANAGEMENT RIGHTS RESERVED

1. Subject to the expressed provisions of this collective bargaining agreement, the Company reserves and retains, solely and exclusively, all its inherent rights to manage the business as such rights existed prior to the execution of this Agreement. *The Company shall have the full and exclusive* authority to determine and direct the policies, procedures and methods of operating its business. Without limiting the generality of the foregoing, the management rights not abridged by this Agreement include, but are not confined to, the right to determine and from time to time, to redetermine the number, types and locations of its operations, and the methods, equipment, and processes to be employed; to discontinue or automate methods, equipment, processes or operations, the right to determine the qualifications for new employees and to select its employees; to determine standards of production and the size and composition of its work force; to determine production and shipping schedules and methods of shipping and production; to determine the number and type of equipment, machinery, materials and supplies to be used or operated and the products to be manufactured, processed or sold or the services to be rendered or supplied; to hire, promote, transfer and assign employees to work; to reprimand, discharge or otherwise discipline employees; to determine job content and the amount and type of work needed; to determine and make the assignments of work; to schedule the hours and days and breaks and number of breaks and to determine the number of hours and days to be worked in each job in each shift; to discontinue or to transfer, assign or subcontract all or any part of its

business operations to be performed by any outside person, firm or corporation whatsoever, selected by the Company in its sole discretion subject to the provision of Paragraph 3 of this Article, to expand, reduce, alter, combine, transfer, assign or cease any job, job classification, department or operation; to determine the amount of supervision necessary; to control and regulate or discontinue the use of supplies, equipment, machinery and processes and any other property owned, used, leased, or possessed by the Company; to unilaterally establish, modify, and enforce the plant rules or regulations and/or disciplinary procedures, policies and practices; to introduce new, different, or improved methods, means and processes of transportation, production, maintenance, service and operation; and, otherwise, generally to manage the plant and direct the work force; the Company's failure to exercise any function or right in any particular way shall not be deemed a waiver of its rights to exercise such function or right, nor to preclude the Company from exercising the same, in some other way not in conflict with the express provisions of this Agreement.

2. The above enumerated rights of management are not all inclusive, but indicate the types of matters which belong to and are retained by the Company.

3. Except as specifically abridged, delegated, granted or modified by this Agreement, or by any supplementary agreements that may be made hereinafter, all of the rights, powers and authority of the employer existing prior to the signing of this Agreement are retained by the Company and remain exclusive and without limitation within the rights of management. It is understood however, that work customarily assigned to members of the bargaining unit shall only be contracted out in cases of emergencies or overflow conditions and that it is not intended that subcontracting of work shall result in the lay-off of employees within the bargaining unit.

4. Union stewards and local union officers employed by the Company are subject to the same discipline as any other employee covered by this agreement for violation of the Company's rules and regulations.

5. When a written reprimand or statement against an employee is to be entered in his disciplinary record, the Company will furnish him with a copy of the same and require him to sign that he has received it. Failure to acknowledge receipt of such statement shall constitute just cause for discharge. In arbitration cases reprimands shall not be considered cumulative if more than one (1) year apart, but all reprimands shall remain permanently in the employees file.

ARTICLE V

GRIEVANCE PROCEDURE

1. Any dispute or grievance arising in the plant or arising out of the interpretation or application of the terms of this Agreement shall be settled in accordance with the procedures hereinafter set forth, provided, however, that the filing, discussion and settlement of grievances shall in no way interrupt production or hinder the efficient operation of Company's plant.

a. When filed by an employee:

Step 1. Such employee and/or his steward shall, within three (3) work days, exclusive of holidays or other non-work days, from the act or omission giving rise to the grievance, present such grievance to his immediate supervisor and earnestly attempt settlement of the grievance.

Step 2. Failing a satisfactory settlement within three (3) work days of the time when such grievance is presented to his immediate supervisor, the aggrieved employee may, either individually or through his steward, file said grievance with the

Production Manager within five (5) work days, exclusive of holidays and other non-work days, from the reply or action of or by his immediate supervisor, or from the end of the time allowed for his reply or action. Such grievance shall be in writing and shall state the specific provisions of this Agreement (giving the page and paragraph thereof) which he believes to have been violated in his case, and shall specify the act or omission giving rise to said grievance. Such grievance shall be taken up by the Production Manager at a time designated by him for the purpose of hearing and determining grievances. An aggrieved employee may discuss his grievances personally with the Production Manager or through his steward, as the employee may elect. However, in the event the aggrieved employee shall elect to present such grievance through his steward, such steward shall, prior to discussing such grievance with the Production Manager, present specific authorization in writing from the aggrieved employee authorizing him to present for settlement the actual grievance involved.

Step 3. Failing satisfactory adjustment of the grievance by the Production Manager within (5) work days after the grievance has been presented to him, exclusive of holidays or other non-work days, the employee may, either personally or through his duly authorized steward, appeal said grievance to the General Manager within five (5) work days, exclusive of holidays or other non-work days, of the reply or action by or of the Production Manager, or the end of the time for his reply or action. Such appeal shall be perfected by notifying the Company's General Manager, or his designated representative in writing of the substance of the grievance originally filed with the Production Manager, together with the specific provisions of this Agreement, (giv-

ing the page and paragraph thereof) which he believes to have been violated in his case, and of the specific details of the act or omission giving rise to said grievance. Such employee may also request that he personally, or through said employee's duly authorized steward, meet with the Company's General Manager, or his designated representative, and the Production Manager, for the purpose of presenting the grievance involved.

Step 4. In the event that the grievance shall not have been satisfactorily settled by the Company's General Manager, or his designated representative, within ten (10) days after recourse has been had to all the above steps, the employee may, within thirty (30) days of the action of the Company General Manager, or at the end of the time allowed for his reply, action or decision, make a written request for arbitration as set forth herein in Article VI.

b. In the event the Union in its capacity as the Collective Bargaining Agent or the Company is aggrieved concerning the administration or application of the Agreement, that party shall file written complaint with the other party within ten (10) days, exclusive of holidays or other non-work days, from the date on which the act or omission giving rise to such grievance occurred, setting out therein the provisions of this Agreement (giving the page and paragraph thereof) which is believed to have been violated, and specifically setting forth the errors it believes to have been committed. Such notice to the other party shall be perfected by notifying the designated representative, by Certified Mail, setting forth the information and details specified hereinabove. Failing satisfactory settlement by the other party within twenty-four (24) hours of the time when said written complaint has been received by the other party the aggrieved party may, within thirty (30) days from the date of decision, or of the end of the time allowed for

same, make a written request for arbitration set forth herein in Article VI.

2. The procedure herein set out for adjusting grievances shall constitute the only method available to aggrieved employees and/or the Union. Failure to comply with said procedure with respect to the time and manner of filing or grievances and appeals shall constitute a waiver of all complaints or grievances on the part of any employee who believes himself to be aggrieved, and/or on the part of the Union, and such grievance shall be deemed forever concluded and closed. Failure of the Supervisor, Production Manager or the General Manager to render a decision within the time specified in this Article shall be considered as a decision adverse to the aggrieved. If more than one grievance is filed with respect to the same act or omission giving rise thereto, the grievances shall be consolidated for hearing and decision in every step of the procedure hereby provided for their settlement.

3. Nothing in this Article nor under the terms of this Agreement shall ever be construed or applied so as to prevent any employee or group of employees from presenting their grievances to the Company and having the Company decide such grievances in accordance with the provisions of Section 9 (a) of the National Labor Relations Act, as amended.

ARTICLE VI

ARBITRATION PROCEDURE

1. Any grievance which remains unsettled after having been fully processed through the grievance procedure described in Article V may be submitted to arbitration upon the written request of either the Company or the Union, provided such request is made within thirty (30) days after final decision of the Company.

2. The impartial arbitrator shall be selected as follows: If the parties are unable to agree upon an impartial arbi-

trator within fifteen (15) days after notice of the arbitration is given to the other party, the Federal Mediation and Conciliation Service shall be requested to provide a list of five (5) arbitrators. Either party may refuse any list and request another. First the party desiring arbitration, then the other party, shall alternatively strike names from the mutually accepted list until only one (1) remains, and this person shall act as the arbitrator.

3. It is understood and agreed between the parties that the powers of the arbitrator are limited as follows:

a. He shall have no power to add to, subtract from or modify any of the terms of this Agreement or any supplementary agreement nor to rule on any matter except while this Agreement is in full force and effect between the parties.

b. He shall have no power to substitute his discretion for the employer's discretion in cases where the employer is given discretion by this Agreement.

c. He shall deal only with the grievance or grievances set forth in the submission agreement submitted to the arbitrator by the parties.

d. He shall not consider any heresay evidence.

e. Priority shall be given to deciding discharge cases and the arbitrator shall make his best effort to decide these cases within fourteen (14) days of the hearing.

f. The Company in no event shall be required to pay back wages for more than three (3) working days prior to the date a written grievance is filed. In the case of a pay shortage of which the employee could not have been aware before receiving his pay, any adjustment shall be retroactive to the beginning of the pay period covered by such pay, if the employee files his grievance

within three (3) working days after receipt of such pay.

g. All claims for back wages shall be limited to the amount of wages that the employee otherwise would have earned less any unemployment compensation or compensation for personal services or other awards or benefits that he may have received or could with diligent effort have received from any source during the period in question.

h. The decision of the arbitrator in any case shall not require a retroactive wage adjustment in any other case. Either party may, prior to the submission of a dispute to arbitration, state and the opposite party is bound to agree that the award shall not be a binding precedent in like or analogous situations.

4. The expenses of the arbitrator shall be shared equally between the Company and the Union, and each shall pay one-half (½) of the costs, fees and expenses incidental to any such arbitration exclusive of the fees and expenses of the attorneys or witnesses or other similar items of expenses incurred by each respective party. The arbitration proceedings may be recorded and transcribed by a court reporter or other qualified person upon the request of either party, at the expense of requesting party.

5. The decision of the arbitrator shall be final and binding to both parties of this Agreement.

* * * *

ARTICLE XI

MAINTENANCE OF DISCIPLINE

1. The Union agrees to cooperate with the Company in maintaining proper discipline and compliance with the plant rules and regulations. The Company shall retain the right to establish, maintain, enforce, rescind, amend

or change rules and regulations regulating the discipline or discharge of employees and the procedures for issuance of reprimands and other forms of discipline. Plant rules will be posted and a copy sent to the local Union before posting. The Union may challenge any plant rule within fifteen (15) days after such posting, only on the basis of fairness and necessity of such plant rule, however, plant rules will be effective immediately upon posting and remain in effect until ruled on by grievance and arbitration procedures as to fairness and necessity.

2. The Union agrees to cooperate with the Company in maintaining and improving the quality of work, operating efficiency, safety and production in the Company's operations. Recognizing that the welfare of the employees and their opportunities to maintain and improve their livelihood depend upon the efficiency in the Company's operations, and consistent with the principle of a fair day's work for a fair day's pay, the Union hereby pledges for itself and all of its members that they will perform their work effectively and efficiently to the best of their ability, and that they will wear all items of safety clothing and equipment required by the Company. In order for the Company to maintain the highest possible volume of production and quality of service, the Union will do all in its power to combat practices which impede or interfere with these objectives.

* * * *

GRIEVANCE ATTACHED TO THE ANSWER AS EXHIBIT B

GRIEVANCE REPORT

Grievance No. Plant No. MISCO Date 2-7-83

Name ISIAH COOPER Clock No. 1046

Job OPERATOR Department WINDER

Contract Reference

Article Work Rules Section

Nature of Grievance:

Unjustified Termination.

Settlement Desired:

Re-instate and make whole for all losses.

/s/ Isiah Cooper
Employee Signature

* * * *

Grievance Procedure—Second Step

Date Submitted Union Representative

Answer:

_____

Signature of Company Official

_____

Title

_____

Date

GRIEVANCE PROCEDURE—THIRD STEP

Date Submitted 2-7-1983 Union Representative Illegible

ANSWER: Meeting was held on Mon. 2/14/83 at 9:30 am to establish proof as to the reason why Isiah Cooper was terminated. Present were Otha Pittman (sic), Isiah Cooper, Horace Curry, Fred Billhorn, Biff Meredith, Charles Covington and two police officers who arrested Cooper on company property on Fri. Jan. 21. Isiah Cooper violated company rules in being in a car with a lit marijuana cigarette. This was a direct violation of company rules as outlined in present work contract of having an illegal substance on company property is subject to immediate termination. Management was asked to provide sufficient evidence at this hearing and are satisfied that they did. The two police officers testified that Cooper got out of the car where they found the lit marijuana cigarette.

/s/ Charles Covington
Signature of Company Official

Production Manager
Title

2/14/83
Date

* * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. CV 83-2904

MISCO, INC.,
Plaintiff

versus

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and ITS OUACHITA LOCAL 654,
Defendants

[Filed Mar. 14, 1984]

ANSWER TO COUNTERCLAIM

Comes now MISCO, INC., Plaintiff in the above action and for answer to counter claim of Defendant Union for attorney's fees and costs, states in response thereto as follows:

1.

Plaintiff admits paragraph 12 and further states that the actions are invoked under the Arbitration Act, 9 U.S.C. Section 4.

2.

Plaintiff admits the allegations of paragraph 13.

3.

Plaintiff admits the allegations of paragraph 14.

4.

Plaintiff admits the allegations of paragraph 15.

5.

Plaintiff admits the allegations of paragraph 16.

6.

Plaintiff admits the allegations of paragraph 17.

7.

Plaintiff admits the allegations of paragraph 18.

8.

Plaintiffs denies the allegations of paragraph 19, except that Plaintiff has refused to abide by said award pending appeal to this Court based upon the grounds set forth in its petition.

9.

Plaintif denies the allegations of paragraph 20.

To the extent required to do so, Plaintiff denies the prayer for relief and asserts that the Plaintiff's refusal to abide by the award was not without justification and that Defendant Union should not be entitled to attorney's fees, costs or other relief.

Respectfully submitted,

HUDSON, POTTS & BERNSTEIN
Post Office Drawer 3008
Monroe, Louisiana 71210

By: /s/ A. Richard Gear
A. RICHARD GEAR
Attorneys for Misco, Inc.

(Certificate of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. CV 83-2904

MISCO, INC.,

Plaintiff,

vs.

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and ITS OUACHITA LOCAL 654,

Defendants.

[Filed Mar. 12, 1984]

MOTION TO DISMISS AND FOR SUMMARY JUDGMENT OF DEFENDANTS UNITED PAPERWORKERS INTERNATIONAL UNION AND ITS OUACHITA LOCAL NO. 654

Pursuant to Rules 12 and 56 of the Federal Rules of Civil Procedure, Defendants United Paperworkers International Union (UPIU) and UPIU Local No. 654 (hereinafter collectively referred to as the "Union") hereby move to dismiss or in the alternative for summary judgment in this cause. The Union also moves for summary judgment in its favor on its Counterclaim for enforcement of the Arbitration Award.

In support of this Motion, the Union shows that there is no genuine issue as to any material fact in this matter and that the Union is entitled to judgment as a matter of law. This Motion is based on the pleadings in this cause and the enclosed Memorandum in Support of De-

fendant Unions' Motion to Dismiss and for Summary Judgment.

WHEREFORE, Defendant Unions' Motion to Dismiss and for Summary Judgment should be granted, and an Order entered by this Court dismissing Plaintiff's Complaint for vacation of the Arbitration Award, granting Defendant Union's Counterclaim for enforcement of the Award, and granting Defendant Union its costs, attorneys fees, and all other relief to which this Court finds the Union entitled.

Dated this 7th day of March, 1984.

/s/ Robert H. Urann
ROBERT H. URANN
BARKER, BOUDREAUX, LAMY,
GARDNER & FOLEY
837 Gravier Street, Suite 1400
New Orleans, LA 70112
(504) 586-9395

(Certificate of Service Omitted in Printing)

EXHIBITS TO DEFENDANTS' MOTION

EXHIBIT No. 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. CV 83-2904

MISCO, INC.,
Plaintiff,

versus

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and ITS OUACHITA LOCAL 654,
Defendants.

AFFIDAVIT

STATE OF TEXAS)
TARRANT COUNTY)

BEFORE ME, the undersigned Notary Public, personally came and appeared James H. Dunn, 1212 Circle Lane, Bedford, Texas 76021, who after being duly sworn, deposed and stated as follows:

1. I am currently employed as an International Representative of the United Paperworkers International Union (Union), Region VI.

2. As the International Representative for Region VI, I represented the Union in the final and binding Arbitration between Misco, Inc. of Monroe, Louisiana and the United Paperworkers International Union Local No. 654 of West Monroe, Louisiana on September 26, 1983, which

arbitration concerned the grievance of the discharge of Isiah Cooper.

3. On or about October 31, 1983, Arbitrator M.J. Fox, Jr., P.E., Ph.D. rendered his decision in the arbitration and sustained the grievance. The award ordered Misco to restore Isiah Cooper to his job and make him whole for any lost earnings, seniority or other fringe benefits.

4. Immediately after I received a copy of Arbitrator Fox's Opinion and Award, I received a phone call from Misco President, Fred A. Billhorn, wherein Mr. Billhorn informed me that the Union was responsible for turning loose a dope dealer and that we were a detriment to the City of Monroe. He also said that he was going to do everything he could, including talking to everyone he knew in Monroe, to destroy the Union. Finally, he told me that he had no intention of complying with Arbitrator Fox's Award and would spend every penny he had to keep the matter tied up in court and Isiah Cooper out of his plant.

The above and foregoing statement is true and correct to the best of my knowledge, information and belief.

/s/ James H. Dunn
JAMES H. DUNN

Sworn to and subscribed before me Notary Public this 5 day of March, 1984.

/s/ Rita Laylors
Notary Public

EXHIBIT No. 3

Law Offices
HUDSON, POTTS & BERNSTEIN
Tenth Floor
Ouachita National Bank Building
P.O. Drawer 3006 Tel. (318) 386-4400
Monroe, Louisiana
71210

November 14, 1983

Mr. James H. Dunn
UNITED PAPERWORKERS INTERNATIONAL UNION
3131 N. Stemmons Fwy.
Suite 59—Lewis Building
Dallas, Texas 75247

Re: Isiah Cooper Arbitration

Dear Jim:

This is to confirm that Misco, Inc. will move to vacate the Arbitration Award in the above matter. Misco, Inc. waives Isiah Cooper's presenting himself for work in person. You may consider that he has presented himself for work and has been refused his job and back pay in total compliance with the obligations imposed upon him by the Arbitration Decision.

Very truly yours,

HUDSON, POTTS & BERNSTEIN

/s/ A. Richard Gear
A. RICHARD GEAR

ARG/dh

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

Civil Action No. CV 83-2904

MISCO, INC.,

Plaintiff

versus

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and ITS OUACHITA LOCAL 654,

Defendants

[Filed Apr. 18, 1984]

CROSS-MOTION FOR SUMMARY JUDGMENT OF PLAINTIFF, MISCO, INC.

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff, Misco, Inc., hereby moves for Summary Judgment in this case. In support of its Motion, Plaintiff shows there is no genuine issue as to any material fact in this matter and that it is entitled to judgment as a matter of law. This Motion is based upon pleadings in this case and the attached Memorandum In Support of Plaintiff's Cross-Motion for Summary Judgment and In Opposition to Defendant Union's Motion To Dismiss and For Summary Judgment.

WHEREFORE, Plaintiff's Motion for Summary Judgment should be granted and an Order entered by this Court vacating the arbitration award in this case.

Dated this 17th day of April, 1984.

Respectfully submitted,

HUDSON, BOTTS & BERNSTEIN
Post Office Drawer 3008
Monroe, Louisiana 71210

By: /s/ A. Richard Gear
A. RICHARD GEAR
Attorneys for Plaintiff,
Misco, Inc.

(Certificate of Service Omitted in Printing)

EXHIBITS TO PLAINTIFF'S CROSS MOTION

[LOGO]

MISCO, INC.

August 5, 1982

Isiah Cooper

Subject: Written Reprimand
Reduction in Pay Rate

Isiah,

As discussed with you on August 3, concerning the substantial production problems with Technical Chemical, please be advised to the following.

Your operator's pay has been reduced to the 120 day rate for a period of 20 working days.

I would like to remind you that as an operator, it is your responsibility to read and fit the production orders up correctly.

It is also your responsibility to achieve on a continuous basis production standards if you expect to be paid at the high rate.

Zeke, perhaps that you will turn yourself around and mold yourself into the top notch rewinder operator that you are capable of becoming.

CHARLES COVINGTON
Production Manager

kk

[LOGO]

MISCO, INC.

January 20, 1983

TO: Isiah Cooper

SUBJECT: Written Reprimand
90 Day Probation
Rate cut for 20 working days

On January 13, 1983 you were instructed to set up and run an order for Consolidated Can, calling for 6 11/16" wide cuts. The order instructed you to check each and every coil as to the width because it was very critical. You ran five (5) sets of material with the outside coil measuring 6 9/16" wide, which was unacceptable and had to be rejected. Any operator can run one bad roll without his knowing of it, but to run five (5) sets is totally irresponsible. You are a responsible operator manning one of the prime pieces of equipment this company owns, to remain there you are going to have to become aware of what your job consists of. You were disciplined in July 1982 for another error in not following instructions. We can not allow this trend to keep happening. An operator with six years experience should not keep making these mistakes that cost the company money that it can not afford in these competitive times.

It has been decided by management to discipline you as follows:

1. Starting January 13, 1983 and through February 23, 1983 you will be paid at the 120 day rate.
2. Starting January 13, 1983 and through April 13, 1983 you will be placed on a 90 day probation period. During this time your work performance, attitude, and productivity will be monitored very closely.

Your continued employment with this company is in your hand, as one more mistake such as this will result in your being removed from this machine permanently.

CHARLES COVINGTON
Production Manager

CERTIFIED REPORT

RS. 15:499-501

Date 9-21-83 Lab No. ND-2090-86

NORTH LOUISIANA CRIMINALISTICS LABORATORY
1115 Brooks St.—Shreveport, La. 71101—227-2889

Agency Address	Metro Narcotics Unit P.O. Box 16 Monroe, La. 71201 Attn: Sgt. Royce Toney
Parish:	Ouachita
Date Submitted:	9-21-83
Hour Submitted:	3:29 PM
Submitted by:	Sgt. Royce Toney
Examination Requested:	Marijuana

Isiah W. Cooper, Jr.

Evidence Rec'd by: Susan T. Rutledge

Evidence Analyzed by: Susan T. Rutledge

/s/ Susan T. Rutledge

Lab Director: /s/ Ray Herd

Description of Evidence:

1. One (1) brown envelope containing one (1) plastic case containing vegetable matter.

Report: Analyzed 9-21-83

The vegetable matter in item #1 was determined to be marijuana.

PERMISSION FOR SEARCH AND SEIZURE

Date: 1-21-83 Time: 6:55 PM

In order to cooperate with members of law enforcement agencies in connection with an investigation being conducted by them, I, Isiah Cooper, residing at 603 Lidell St., Monroe, La., do hereby voluntarily authorize Sgt. D. McClanahan, Sgt. R. Toney, Metro Narc. Unit to search my vehicle (or other real estate) located at Misco Inc., Jackson St., Monroe, La., and my motor vehicle(s), namely my 1973 Pontiac license numbered 126E741, presently parked or located at Misco Parking Lot, Jackson St., Monroe, La. And I FURTHER AUTHORIZE these said Officers to remove from my said residence, real estate, and/or motor vehicle(s) whatever documents, articles, or other items of property whatsoever which they deem pertinent to their investigation, with the understanding, of course, that these Officers will give me a receipt for whatever they remove.

I AM GIVING THIS WRITTEN PERMISSION to these Officers freely and voluntarily without any threats or promises having been made to me and after having been informed by these Officers that I have the right to refuse to permit this search and seizure. It is my desire to assist the officers in their investigation by saving them the extra time it would take to obtain a Search Warrant and, for this reason, I have given my permission.

/s/ Isiah Cooper

WITNESSES:

/s/ Sgt. D. McClanahan

/s/ Sgt. R. Toney

Louisiana Revised Statute

§ 966. Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; possession of marijuana

* * * *

D. Possession of marijuana. (1) Except as provided in Subsections E and F hereof, on a first conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof the offender shall be fined not more than five hundred dollars, imprisoned in the parish jail for not more than six months, or both.

(2) Except as provided in Subsections E and F hereof, on a second conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof the offender shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than five years, or both.

(3) Except as provided in Subsections E and F hereof, on a third or subsequent conviction for violation of Subsection C of this Section with regard to marijuana, tetrahydrocannabinol or chemical derivatives thereof the offender shall be sentenced to imprisonment with or without hard labor for not more than twenty years.

Added by Acts 1981, No. 800, § 1, eff. Aug. 2, 1981.

E. (1) Except as otherwise authorized in this Part, any person who knowingly or intentionally possesses one hundred pounds or more, but less than two thousand pounds, of marijuana, tetrahydrocannabinol or chemical derivatives thereof, shall be sentenced to serve a term of imprisonment at hard labor of not less than five years, nor more than ten years, and to pay a fine of not less than twenty-five thousand dollars.

(2) Except as otherwise authorized in this Part, any person who knowingly or intentionally possess two thousand pounds or more, but less than ten thousand pounds, of marijuana, tetrahydrocannabinol or chemical derivatives thereof, shall be sentenced to serve a term of imprisonment at hard labor of not less than ten years, nor more than fifteen years, and to pay a fine of not less than fifty thousand dollars.

(3) Except as otherwise authorized in this Part, any person who knowingly or intentionally possesses ten thousand pounds or more of marijuana, tetrahydrocannabinol or chemical derivatives thereof, shall be sentenced to serve a term of imprisonment at hard labor of not less than fifteen years, nor more than twenty years, and to pay a fine of not less than two hundred thousand dollars.

Added by Acts 1981, No. 800, § 1, eff. Aug. 2, 1981.

F. (1) Except as provided in Paragraph (2) hereof, with respect to any person to whom the provisions of Subsection E are applicable, the adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for probation or parole prior to serving the minimum sentences provided by Subsection E.

(2) The district attorney may move the sentencing court to reduce or suspend the sentence of any person to whom the provisions of Subsection E are applicable who provided substantial assistance in the identification, arrest or conviction of other parties or conspirators to the crime for which he was convicted or to related crimes. The arresting agency shall be given an opportunity to be heard in reference to any such motion. The court may reduce or suspend the sentence if it finds that the defendant rendered such substantial assistance.

Added by Acts 1981, No. 800, § 1, eq. Aug. 2, 1981.

Occupational Safety and Health Act of 1970

29 U.S.C. § 654. Duties of employers and employees

(a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with occupational safety and health standards promulgated under this chapter.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this chapter which are applicable to his own actions and conduct.

Pub.L. 91-596, § 5, Dec. 29, 1970, 84 Stat. 1593.

STATE OF LOUISIANA
PARISH OF OUACHITA

AFFIDAVIT

I, Fred Billhorn, President of Misco, Inc., give the following statement:

Immediately after I received a copy of Arbitrator Fox's Opinion and Award, I telephoned International Paperworkers representative, James Dunn, and told him that I was disappointed in the Arbitration Award and that I was disappointed in the Union's stance in backing that employee because of his drug problem. I did tell Mr. Dunn that I would tell the people in Monroe about the Union's stand on this position, because I felt it was wrong. I did not say I would do everything I could to destroy or get rid of the Union or anything to that effect. I told Mr. Dunn that I would appeal the arbitrator's decision which I thought was wrong and thereby do everything I legally could to keep from putting Cooper back to work.

I personally am convinced that the reinstatement of Cooper would have a serious effect upon the younger employees in this plant by increasing and encouraging the possession or use of drugs on the Company premises. I feel that the arbitrator's award was misguided and is against common sense and public policy in controlling criminal drug problems in the work place.

I swear the foregoing statement is true and correct to the best of my knowledge and belief.

/s/ Fred Billhorn
FRED BILLHORN
President of Misco, Inc.

_____
(Address)

SWORN TO AND SUBSCRIBED before me, Notary, on this 16th day of April, 1984.

/s/ [Illegible]
Notary Public

STATE OF LOUISIANA
PARISH OF OUACHITA

AFFIDAVIT

I, Charles Covington, give the following statement:

I am the production manager of Misco, Inc. and am the same Charles Covington that testified before the arbitrator on September 26, 1983, in the matter of Isiah Cooper's discharge. I have read the arbitrator's decision at page 31 where he states that the Company presented nothing about our actions concerning the bottle of whiskey found in the white Cutlass on our parking lot. In fact, I did not learn about the whiskey bottle's presence in the vehicle until later, at the grievance meeting with the Union about a week after the discharge. I testified at the hearing that I attempted to investigate the presence of the whiskey bottle and as I could not establish the identity of the other two individuals in the car with Cooper, could take no action against them, and I also satisfied myself that the owner of the car, George Williams, had not been sitting in his car at the time of the incident and was not responsible for the whiskey bottle. I testified before the arbitrator that because of these factors, I took no disciplinary action with respect to the whiskey bottle.

I swear the foregoing is true and correct to the best of my knowledge and belief.

/s/ Charles Covington
CHARLES COVINGTON
Production Manager
of Misco, Inc.

_____
(address)

SWORN TO before me, this 16th day of April, 1984.

/s/ [Illegible]
Notary Public

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

Civil Action No. 83-2904

MISCO, INC.,

Plaintiff

versus

UNITED PAPERWORKERS INTERNATIONAL UNION, AFL-CIO, and its OUACHITA LOCAL 654,

Defendants

[Filed Oct. 23, 1984]

NOTICE OF APPEAL

Notice is hereby given that United Paperworkers International Union, AFL-CIO, and its Ouachita Local 654, defendants in the above captioned matter, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this action on the 24th day of October, 1984.

GARDNER, ROBEIN & HEALEY

/s/ Robert H. Urann (MHB)
ROBERT H. URANN
2540 Severn Avenue, Suite 400
Metairie, LA 70002
(504) 885-9994

/s/ Mark M. Brooks (MHB)
MARK M. BROOKS
United Paperworkers
International Union
P.O. Box 1475
Nashville, Tennessee 37202
(615) 834-8590